IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.23456 OF 2001
AND
W.P.M.P.NO.40767 OF 2005

1.The Chief Engineer/Distribution,
Tamil Nadu Electricity Board,
Gandhi Nagar,
Vellore-6
now controlleed by
The Chief Engineer,
Distribution,
Tamil Nadu Electricity Board,
Villupuram.
2.The Executive Engineer,
Operation and Maintenance,
Panruti Division,
Tamil Nadu Electricity Board,
Panruti-607 106. .. Petitioners

Vs.

1.Govindakrishnan
2.The Presiding Officer,
Labour Court,
Cuddalore. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the second respondent/Labour Court, relating to its order, dated 21.5.2001 and passed in I.D.No.92 of 1994 and to quash the same as illegal and without jurisdiction.

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For Petitioner : Mr.M.Vaidyanathan
For Respondents: Mr.T.Dhanyakumar for R1

ORDER

A challenge is made to an order of the second respondent, Labour Court, Cuddalore made in I.D.No.92 of 1994, whereby an order of termination of service of the first respondent, Wireman attached to the Tamil Nadu Electricity Board, Panruti Division, was set aside and modified as one stoppage of increment with continuity of service and backwages.

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2.The court heard the learned counsel on either side. The affidavit filed in support of the writ petition and the grounds and also the order under challenge are perused.

3.The following facts would emerge as admitted.

The first respondent was working as the Wireman in the Tamil Nadu Electricity Board, Panruti Division (Operation and Maintenance). He absented himself from 20.9.1990. He was suspended on three charges levelled against him, namely unauthorised absent, disconnection of power in the village and theft of copper wire. The charge memo was served upon him, calling for explanation, which he did not submit. An Enquiry Officer was appointed, who conducted enquiry and has held that the charges were proved. The second show cause notice was issued on him on 22.12.1990. The first respondent has submitted his reply. Thereupon, his service was terminated. Challenging the same, he preferred an appeal and the same was also dismissed. There arose an industrial dispute, whereby the order under challenge was made. The Labour Court, Cuddalore, on enquiry, set aside the order of dismissal of the first respondent and has ordered reinstatement with continuity of service and backwages, but modified the punishment as one of stoppage of increment. Aggrieved the Electricity Board has brought forth this writ petition before this court.

4.Advancing his arguments on behalf of the petitioner, the learned counsel would submit that when the charge memo was issued on three charges levelled against the delinquent/first respondent, he did not tender explanation; that thereafter, an enquiry was proceeded with; that pursuant to the Enquiry Officer's report, the second show cause notice was issued on him, for which he gave reply and thereupon, an order of termination came to be passed; that when an appeal preferred by the first respondent was dismissed, he took it by way of industrial dispute; and that the Labour Court has set aside the order of termination of service and has also modified the punishment as one for stoppage of increment, but ordered continuity of service with payment of backwages.

5.Added further the learned counsel that the order of the labour court is erroneous; that both the parties, at the time of enquiry, made an endorsement to the effect that the court could proceed with the matter under Section 11(A) of the Industrial Disputes Act and thus, it would be quite clear that under the said provisions, the Labour Court was to proceed with the matter on the materials available and it cannot record or rely on any fresh evidence; that while there were three charges levelled against him, the Labour Court has accepted the first charge, namely unauthorised absent; that so far as the second charge of disconnection of power in the village is concerned, the Labour court has not given any finding; and that so far as the third charge was concerned, the Labour Court has relied on the judgment of the criminal court, whereby the first respondent was acquitted of the charge of theft. The learned counsel would further submit that once an endorsement was made that the court could proceed with the matter under Section 11(A) of the Act, the judgment of the criminal court, acquitting the delinquent, should not have been taken into consideration, but on the basis of the same, the Labour court has recorded a finding that the charge of theft was not proved; that so far as

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the disconnection of power in the village is concerned, there was no finding and under these circumstances, the order of the labour court has got to be set aside. Added further the learned counsel that in the instant case, punishment of termination was modified by imposing the punishment of stoppage of increment, but it is a matter of surprise to note that the Labour Court has ordered continuity of service with backwages and hence, it has got to be set aside.

6.The court heard the learned counsel for the first respondent, who made sincere attempt in sustaining the order of the labour court, which is under challenge.

7.The court has paid its anxious consideration on the submissions made. In the instant case, it is not in controversy that following the suspension on 25.9.1990, the charge memo was issued on the delinquent on 1.10.1990. For the charge memo issued, the delinquent did not put forth any explanation. The Enquiry Officer was appointed, who conducted enquiry and has given a report. Thus, it would be quite clear that the delinquent was set ex parte and an order came to be passed. After the report was made, the second show cause notice was served on him on 22.12.1990. From the available materials, it would be quite clear that the delinquent gave a representation, stating that he could not be present due to the reasons stated therein and an opportunity should be given to him and then, enquiry has got to be conducted. But, that part of the representation was not considered, but an order of termination came to be passed. While such a grave charges were levelled against him and he could not be present at the time of enquiry and when a report was made ex parte, he might be given an opportunity of being heard. In the opinion of the court, when the charges were grave, an opportunity of being heard should have been given to him, but not done so. Following the termination order, he made an appeal and even in that appeal, those contentions were not considered and the appeal was dismissed, which compelled him to go before the Labour court by way of an industrial dispute.

8.The contentions put forth by the learned counsel for the petitioner are considered. In the instant case, it is true, both the parties were made an endorsement that it could be done under Section 11(A) of the Industrial Disputes Act. Needless to say that in a case where the labour court proceeds under Section 11(A) of the Act, it could act on the materials available and it should not look into any evidence. But, in the instant case, the intervening circumstance was the decision of the criminal court, acquitting him of the charge of theft. Under these circumstances, the contention of the learned counsel for the writ petitioner that the labour court should not have looked into the judgment of the criminal court cannot be countenanced. At this juncture, it is to be pointed out that it is a well settled proposition of law that when domestic enquiry is actually on the same facts, which constituted charges before the criminal court, the domestic enquiry must be stayed or must be kept in abeyance till the disposal of the criminal proceedings, because the decision of the criminal court has got to be taken into consideration and it has got a bearing to take a decision in the domestic enquiry. In the instant case, both the parties made an endorsement that the proceedings could be done under Section 11(A) of the Act. The court is of the considered opinion that there is no impediment in law in looking into

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the judgment, which was passed by the criminal court acquitting the accused. The labour court was perfectly correct in looking into that aspect of the matter and has also incorporated in its order.

9.So far as the absence is concerned, it was affirmed by the court below. The labour court has also stressed upon that an opportunity should be given to the delinquent before orders were passed, but it was not given. Under these circumstances, the court is of the considered opinion that set aside the order of termination of the first respondent passed by the department was perfectly correct. Now, at this juncture, the contention put forth by the learned counsel for the writ petitioner that backwages should not have been ordered cannot be accepted by the court for the simple reason that the petitioner, according to the department, was unauthorised absent from 20.09.1990 and he was suspended on 25.9.1990 within a period of 5 days and he was kept under suspension till he attained superannuation. Under these circumstances, it is further to be pointed out that the backwages could be denied in a case where the opposite party, namely the Management, is able to show that he is gainfully employed, but in the instant case, no material is available to accept the same. Once suspension has been made and it was agitated by the employee before the forum by way of an appeal and thereafter, before the labour court and at the end, the labour court has passed an order of reinstatement, the court is of the considered opinion that the first respondent is entitled for backwages as one declared by the labour court and therefore, there is nothing to interfere with the said order. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected WPMP is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vvk

To

The Presiding Officer,
Labour Court,
Cuddalore.

1 cc To Mr.M.Vaidyanathan, Advocate, SR.59035.
1 cc To Mr.T.Dhanyakumar, Advocate, SR.58880.

W.P.NO.23456 OF 2001

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